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In the Supreme Court of the United States

OCTOBER TERM 1969

No. 828

JOHN MONTGOMERY, et al.,
Appellants,

vs.

ERNESTINE KAISER, et al.,
Appellees.

On Appeal From the United States District Court
for the Northern District of California

Jurisdictional Statement

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JOHN MONTGOMERY, et al.,
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ERNESTINE KAISER, et al.,
Appellees.

On Appeal From the United States District Court
for the Northern District of California

Jurisdictional Statement

Appellants appeal from the interlocutory judgment of the specially constituted United States District Court for the Northern District of California, one judge dissenting. Appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial constitutional questions are presented.

OPINIONS BELOW

The Opinions of the United States District Court for the Northern District of California are not reported. Copies of the majority and dissenting opinion and copy of the preliminary injunction are attached hereto as Appendix A.

JURISDICTION

This suit was brought on behalf of appellees and all others similarly situated for injunctive and declaratory relief under the authority of Title 42 U.S.C. section 1983 and Title 28 U.S.C. sections 1343(3) and (4), 2201 and 2281 to declare that California Welfare & Institutions Code section 11450(a) and the regulations promulgated thereunder, Public Social Services Manual sections 44-313 and 44-313.51 which limit the state's maximum financial participation in the Aid to Families with Dependent Children program are in violation of the United States Constitution and to enjoin the appellants from enforcing said statutes and regulations against appellees and the class they represent on the ground that such statutes and regulations violate their rights under the Fourteenth Amendment to the United States Constitution.[1]

The order of the Court below granting the preliminary injunction was entered on August 28, 1969. Notice of appeal to this Court was filed in that Court on September 5, 1969.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28 U.S.C., sections 1253 and 2101(b). The following decisions sustain the jursidiction of the Supreme Court to review the judgment on direct appeal to this Court: *United States v. Georgia Public Social Services Commission,* 371 U.S. 285, 287 (1963); *Florida Lime and Avocado Growers, Inc. v. Jacobsen,* 362 U.S. 73, 75-76 (1960).

STATUTES AND REGULATIONS INVOLVED

California Welfare & Institutions Code section 11450(a), and Public Social Services Manual, section 44-313 provide:

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1. The Court below did not rule on the contentions that the statute and regulations also violate the Economic Opportunity Act, as modified and the Social Security Act.

MAXIMUM STATE PARTICIPATION BASE—CHILDREN'S PROGRAMS

Number Eligible Children in Same Home	One Needy Eligible Relative in Home	Two Needy Eligible Relatives in Home
1	$148	$166
2	172	191
3	221	239
4	263	282
5	300	318
6	330	349
7	355	373
8	373	392
9	386	404
10	392	411
11	399	417
12	405	424
13	412	430
14	418	437
15	424	443

Plus $6 for each additional child

California Welfare & Institutions Code sections 11452 and 11453 and Public Social Services Manual section 44-313.51 are set forth in Appendix B hereto.

QUESTIONS PRESENTED

1. Does the California statute which sets out the maximum amounts that the state will pay to families having needy children violate the equal protection clause of the Fourteenth Amendment when said statute operates uniformly to provide all families under the Aid to Families with Dependent Children program (AFDC) who have the same number of needy children the same maximum allowable grant?

2. May the state legislature constitutionally limit the amount it will pay each family having the same number of children when the amount so allowed does not meet in

all cases the minimum basic standards of care required by statute to be determined by the State Department of Social Welfare?

STATEMENT OF THE CASE

Appellees are members of a class who receive Aid to Families with Dependent Children (AFDC) whose needs as determined by the appellant's cost schedules, adopted pursuant to California Welfare & Institutions Code section 11452, are not met because of the limitations set by section 11450(a) on the amount of aid that a family may receive. The Cost Schedules set forth amounts representing the combined allowance for food, clothing, personal needs, recreation, transportation, household operation, education, utilities and housing. The amount allocated by the Cost Schedules to cover each of the above items varies according to the recipient's age, sex, county of residence and according to whether the relatives with whom the child is living are themselves needy. A different Cost Schedule is issued for each county according to that county's particular cost of living.

Appellee Ernestine Kaiser is the unemployed mother of two teenagers and two children of subteen age. The Cost Schedule establishes a need of $300.00 for a family of this composition, however, section 11450(a) limits the aid grant to $263.00 for a family of four needy children living with one needy adult.

Appellee Sandra Williams, representative of one subclass, is the mother of a three year old boy. The Cost Schedule plus work related expenses unmet by appellee's salary, derived from a work training program under the Economic Opportunity Act, totaled $212.00 for the month of December 1967. Section 11450(a) limits assistance to a family of one child with a needy parent to $148.00. The

deficit of $75.90 was met from Mrs. Williams' exempt earnings of $117.10,[2] leaving a net incentive payment of $41.20.

The Cost Schedule established the needs of appellee Helen Hood and her 11 children (representative of the large family sub-class) as $532.00. The aid grant limited by section 11450(a) was $399.00.

Appellees filed a motion for preliminary injunction seeking to restrain appellants from enforcing section 11450(a) of the California Welfare & Institutions Code and the regulations promulgated thereunder on the ground that the statutory limitation on the grant to recipients of AFDC according to size of the family and without regard to the family's need as budgeted by appellant Montgomery violates the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution. Appellants filed a response thereto and a motion to dismiss. The motion to dismiss was denied and the preliminary injunction from which this appeal is taken was issued on the ground that the statutory limitation constitutes a denial of equal protection of the laws.

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2. The Economic Opportunity Act at that time provided for an earnings exemption of $85.00 plus one-half of the remainder. Section 402(a)(8) of the Social Security Act as amended by PL 90-248 (42 U.S.C. 602(a)(8) reduced disregard of earned income to $30.00 plus one-third of the remainder.

THE QUESTIONS ARE SUBSTANTIAL

The Statutory Limitations on Grants to Recipients of AFDC According to the Size of the Family and Not to the Budgeted Need of the Family Does Not Violate the Equal Protection Clause

1. THE LEGISLATIVE PURPOSE IS TO HELP FAMILIES WITH DEPENDENT CHILDREN TO THE EXTENT OF AVAILABLE RESOURCES.

The Social Security Act, section 401 (42 U.S.C. section 601) provides "For the purpose of *encouraging* the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, *as far as applicable under the conditions in such State,* to needy, dependent children and the parents or relatives with whom they are living to *help* maintain and strengthen family life and to *help* such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continued parental care and protection" certain sums of money are appropriated. (emphasis added) This demonstrates that Congress' intent is to help, as far as the states deem practicable, to meet the needs of dependent children. Congress has fully recognized that public resources may be limited and that a State may be unable to meet the full need which is determined by the State.

California Welfare & Institutions Code section 1001 provides in relevant part:

> "The purposes of the public social services for which state grants-in-aid are made to counties are:
>
> (a) To provide on behalf of the general public, and *within the limits of public resources,* reasonable support and maintenance for needy and dependent *families* and persons." (emphasis added)

California pays aid to needy families and not aid to needy children.[3] Welfare and Institutions Code section 11250 reads in part:

> "Aid, services, or both, shall be granted under the provisions of this chapter, and subject to the regulations of the department, to *families* with related children under the age of 18 years, except as provided in Section 11253, in need thereof because they have been deprived of parental support or care due to: . . . ." (Emphasis added.)

The classification is the needy family not the needy child. California meets the requirements of the Social Security Act (42 U.S.C. 602) "that aid to *families* with dependent children be furnished with reasonable promptness to *all* eligible children." (emphasis added)

There are no statutory requirements that the state level of benefits must meet the state determined needs. This Court in *King v. Smith,* 392 U.S. 309, 318, 334 (1968) stated that a state legislature "is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." (at 318)

2. THE MAXIMUM PARTICIPATING BASE (MAXIMUM GRANT) IS THE LEGISLATIVE MEANS TO ACHIEVE THIS PURPOSE WITHIN AVAILABLE RESOURCES.

Section 11450(a) of the California Welfare & Institutions Code sets the maximum grant that the state will pay to families with dependent children. It is scaled to the number of dependent children in the family. This is the maximum payable to all families of the same size to meet in whole or in part their budgeted needs deficit. The budgeted

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3. The state legislature changed the name of the program from Aid to Dependent Children to Aid to Families with Dependent Children with the enactment of the Burton-Miller Act. Calif. Stats. 1965, ch. 1784, p. 4004.

needs (Cost Schedule) are determined by appellant Montgomery pursuant to sections 11452 and 11453 of the California Welfare & Institutions Code (See Appendix B) for each county in the state.

The Cost Schedule is but a device by which the county administrators of the program determine the estimated budget deficiency after taking into account outside income in order to determine the amount of the grant up to the statutory maximum. No family receives more than the maximum grant. Some receive less because the budget deficiency does not equal the maximum. Some families because of outside income such as Social Security benefits, family composition or low cost living area, receive enough to meet their budgeted needs. Others such as appellees do not.

Recognizing that the State maximum may not meet State determined "needs," the State Legislature has authorized the counties to supplement the AFDC grant to meet full State determined "needs." Welf. & Inst. Code § 11451.

No state is required by Congress to apportion more funds than it considers practicable under the particular state's circumstances. With maximum grants California affords help in the same amount to each family with the same number of children. The fact that some families may have additional income such as Social Security benefits which more fully meets their needs, has no relevance to the principal purpose of the program, which is to help needy families. An equally important objective is to get the family off relief and working. The State has not guaranteed and need not guarantee that each family will receive a different individual family dollar amount based on that particular family's state-estimated needs. This may well be desirable but is not compelled by Congress or this Court.

3. THE CALIFORNIA STATUTORY MAXIMUM GRANTS AFFORDED AFDC FAMILIES FULLY COMPORT WITH THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

The frequently cited guidelines set down by this Court in 1911 in *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61 (1911), are founded upon the still valid principle that under our system of government it is the legislative branch which determines the wisdom of, and the necessity for, laws which deal with economic problems and social conditions.

The principles of the *Lindsley* decision, *supra*, are that:

> "1. [A classification is unconstitutional] . . . only when it is without *any* reasonable basis, and therefore is purely arbitrary. 2. A classification having *some* reasonable basis does not offend . . . merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. . . . if *any* state of facts reasonably can be conceived that would sustain [a classification] . . . the existence of that state of facts . . . must be assumed. 4. One who assails the classification . . . must carry the burden of showing that it does not rest upon *any* reasonable basis, but is essentially arbitrary." (*Lindsley v. Nat. Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911)." (emphasis added.)

Since the classification here does not touch on any independent fundamental right, such as that of interstate movement, the traditional standard of whether the statute is "without any reasonable basis" is applicable.[4]

Appellees' contention is that because some recipients, despite the maximum participating base, receive an amount that meets the State estimate of their needs, they are being unconstitutionally discriminated against. The fact that

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4. *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Flemming v. Nestor*, 363 U.S. 603 (1960).

outside income such as Social Security benefits help meet needs that otherwise would not be met because of the maximum grant does not render the State set limits on its financial participation without any reasonable basis.

The classification based on size of the needy family has a reasonable relationship to the purpose of the program, i.e., to help needy families in meeting their needs.[5] *McLaughlin v. Florida,* 379 U.S. 184, 191 (1964). The classification which results in a family receiving $6.00 per child for the tenth and each child thereafter does not constitute an invidious discrimination against large families. The line drawn is a rational one made necessary by the well known fact that a man's wages are not geared to the size of his family. Appellees representing large families receiving welfare benefits are asking for preferential treatment not equal treatment. There must be some incentive for welfare recipients to seek employment. Demonstrative of this is *Macias, et al v. Finch, et al,* United States District Court, Northern District of California No. 50956 Civil, now pending before a specially constituted three-judge court. Plaintiff Tarin as an unemployed father received Aid to Families With Dependent Children—Unemployed Father for his family (wife and 12 children) of $424.00 per month, the statutory maximum. Under the state set Cost Schedule the Tarin family's needs total $685.00. He is now fully employed as defined by the Social Security Act and regulations of the Secretary of the Department of Health, Education and Welfare. His take home pay is $308.80. Plaintiff Macias has a wife and 10 children. Welfare payments, the statutory maximum, amounted to

5. Thus the Court below was in error in determining that the purpose was to meet the needs of AFDC recipients, instead of helping to meet these needs.

$411.00. The Macias family's needs under the Cost Schedule total $554.00. He is now fully employed with a take-home pay of $390.00.

The California maximum grant is not arbitrary, is not invidious, it is realistic in not affording appellees a more favorable (unequal) position than the working head of a family. The statute has a reasonable basis.

4. THE ADDITIONAL FISCAL BURDEN PLACED ON THE ALREADY OVERBURDENED FISCAL RESOURCES OF THE STATE OF CALIFORNIA IF THE DECISION BELOW IS NOT REVERSED WILL LEAD TO A LOWER LEVEL OF BENEFITS AVAILABLE TO WELFARE RECIPIENTS.

California is recognized nationally as having the most progressive, generous and enlightened public assistance program of any state.[6]

California has a state-supervised county-administered public assistance system covering all of the federally aided public assistance programs. For the fiscal year 1969-70 it has been estimated that in California over one and one-half million persons, including over 741,000 children, will be on aid each month with a total expenditure for cash assistance, social services and administration of almost 1.6 billion dollars.[7]

Denial of the power in the state legislature to determine the amount it will pay a family to meet the current state set standard of need, will cost the taxpayers a total of $40,764,700.00 for the balance of this fiscal year (December 1969 through June 1970). Of this total, the federal

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6. *See e.g.*, Graham, *Public Assistance: The Right to Receive; The Obligation to Repay*, 43 N.Y.U. L.Rev. 451, 481 (1968).

7. Statement by John C. Montgomery, Director, California Department of Social Welfare to President's Commission on Income Maintenance Programs, Los Angeles, California, May 24, 1969.

share will be $19,380,600.00, the state's share $14,434,300 and the counties' share $6,949,800.[8]

The fiscal import of an adverse decision will not be limited to these substantial amounts. The state set allowance for housing for Aid to Families with Dependent Children recipients was held to be inadequate by a State Court in *Ivy v. Montgomery*, Superior Court State of California, City and County of San Francisco, No. 592705. This case is now on appeal. The trial court directed the state to establish standards which will insure the safe, healthful housing required by California Welfare & Institutions Code section 11452. Payment of such standards was ordered as limited by the maximum participating base subject to the ultimate decision in *Kaiser v. Montgomery*. An increase in the housing allowance above the current average of $63.00 by $30.00 will cost $65,660,100; (state and local share $34,437,800.00) for the balance of the fiscal year if the statutory maximums established by California Welfare & Institutions Code section 11450(a) are held unconstitutional. An increase of $45.00 per month will cost $100,728,300 (state and local share $52,811,800). An increase of $60.00 per month to bring the average housing allowance to $123.00 will cost $136,712,600 (state and local share $71,660,700). Affidavit of John M. McCoy.

In order to achieve the equality in payments as envisioned by the Court below and to keep within fiscal bounds appellant Montgomery will be compelled to determine the grant by establishing need for each family and then make a "ratable reduction", granting aid to meet the need at a given percentage level. Outside non-exempt in-

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8. Affidavit of John M. McCoy, Chief of the Program Estimates Bureau, California State Department of Social Welfare, attached hereto as Appendix C.

come such as Social Security benefits will be fully counted before aid is granted to the established figure.[9]

The 53% of the recipients whose budgetary deficits are now covered by the AFDC grant[10] will join the appellees in having unmet needs. A few of the appellees, those with large families, may receive increased benefits which will reduce, but not meet the amount of their unmet need.

California's maximum grant is not a money saving device, its purpose is to provide a fair and equitable means of distributing its limited fiscal resources to a maximum number of its needy families.

CONCLUSION

The acknowledged inequities in public assistance will not be remedied but exacerbated by this Court's affirmance of the decision below. The executive and legislative branches of the federal government as well as disciplines far more knowledgeable than the bench and bar are studying these problems. Judicial interference at this point will serve only to confuse rather than clarify the traditional responsibility of the legislative branch of the government. The state and federal legislatures should be unimpeded in their search for equitable solutions realistically gauged to the fiscal resources available to accomplish this end.

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9. *Westberry v. Fisher*, 297 F. Supp. 1109, 1116 (D. Me. 1969).

10. Answer to Interrogatories propounded to John C. Montgomery.

For the reasons stated above, a substantial question under the Constitution is presented in this case. Jurisdiction should be noted.

November 6, 1969

Respectfully submitted,

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Appendix A

United States District Court
For the Northern District of California

No. 49613 Civil

ERNESTINE KAISER, et al.,
Plaintiffs,

vs.

JOHN MONTGOMERY, et al.,
Defendants.

Before Hamlin, Circuit Judge, and
Wollenberg and Zirpoli, District Judges.

MEMORANDUM OPINION

Plaintiffs bring this action on behalf of themselves and all others similarly situated whose monthly payments under California's Aid to Families with Dependent Children (AFDC)[1] are discriminatorily limited by California Welfare and Institutions Code § 11450(a) and pursuant regulations to amounts less than their monetary needs as determined by the Department of Welfare of the State of California, its Director and county administrators. Plaintiffs challenge said statute and pursuant regulations on the grounds that the limitations imposed thereby lack any reasonable basis in light of the purpose of the assistance program and that the statute arbitrarily and capriciously

1. The federal statute entitles the program "Aid and Services to Needy Families with Children." 76 Stat. 185. The California Welfare & Institutions Code refers frequently to "needy children" but does not give the assistance program a name. Throughout this opinion, the program will be referred to as AFDC (Aid to Families with Dependent Children) according to the usage of the parties and defendant's Cost Schedules.

deprives certain AFDC recipients of assistance sufficient to meet their state-determined need but at the same time allows other AFDC recipients to receive assistance adequate to meet their state-determined need.[2]

Plaintiffs assert that the above facts constitute a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution.

Their argument is essentially the following: The California Department of Social Welfare makes payments to needy children according to the provisions of Welfare & Institutions Code §§ 11202, 11250 and 11452. To determine the amount of need generated by each recipient, the Department compiles for each county a "Cost Schedule for Family Budget Units." This Cost Schedule provides the starting point for determining a particular recipient's need. The Cost Schedule sets forth amounts representing the combined allowance for the following items: Food, clothing, personal needs, recreation, transportation, household operations, education and incidentals, utilities, housing, and intermittent needs. The combined allowance represents that state's estimate of need to cover the above items. The amount allocated by the Cost Schedule to cover each of the above items varies according to the recipient's age, sex, county of residence, and according to whether the relatives with whom the child is living are themselves needy. For example, where the supporting relatives are needy, the state-determined need of an infant child is $97.00 per month, whereas the state-determined need of a teenager is $112.00 for a female and $119.00 for a male. Where the supporting relatives are not needy, the state-determined

2. The defendant admits that a monthly average of 47% of AFDC recipients were denied their state-determined needs to some extent during 1967-68, while 53% had their state-determined needs fully met.

need of an infant child is $46.50, and the state-determined need of a teenager is $61.25 for a female and $67.10 for a male. The recipient's county of residence is considered by the state as a determinative factor in establishing need because the cost of living varies widely from county to county within the state. The Department issues a different Cost Schedule for each county according to that county's particular cost of living.

This brief description of the defendant's Cost Schedules points to a crucial fact in this litigation, namely, that state-determined need varies among AFDC recipients according to their particular circumstances. Generally speaking, the state has determined that older children have a higher level of need than younger children, that males of teen age have a higher level of need than females of teen age, that families in which the responsible relatives are needy have a higher level of need than families in which the responsible relatives are not needy, and that recipients living in counties with a high cost of living have a higher level of need than recipients living in counties with a low cost of living.

Plaintiffs in this action make no quarrel with the defendant's Cost Schedule as described above, but assert that the operation of California Welfare & Institutions Code § 11450(a) is without any reasonable basis and denies them equal protection of the laws in violation of the Fourteenth Amendment. The statute places a maximum limitation on the amount of aid that a recipient may receive. Taking into account assistance provided by the United States government, § 11450(a) dictates that aid to AFDC recipients shall not exceed the amounts set forth in the accompanying table.[3]

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3. Participation Base.

The effect of § 11450(a) is to deny to the class represented by plaintiffs assistance adequate to meet their state-determined need, while at the same time granting to all other recipients assistance equal in amount to their state-determined need.

A. Children living with one parent or other relative

Number of Children	Amount
1	$148
2	172
3	221
4	263
5	300
6	330
7	355
8	373
9	386
10	392
11	399
12	405
13	412
14	418
15	424

B. Children living with two eligible parents

Number of Children	Amount
1	$166
2	191
3	239
4	282
5	318
6	349
7	373
8	392
9	404
10	411
11	417
12	424
13	430
14	437
15	443

Plus $6 for each additional child.

The cases presented by the named plaintiffs are illustrative. Plaintiff Ernestine Kaiser is the unemployed mother of two teenagers, male and female, and two children of subteen age. For a family of this composition, the defendant's Cost Schedule establishes a need of $300.00. Section 11450(a), however, permits no more than $263.00 to be given monthly to four needy children living with one needy parent. Consequently, plaintiff is receiving $37.00 less than she needs, according to the state's determination.

Plaintiff Sandra Williams is the mother of a three-year old boy. Her needs consist of the usual items listed for each recipient in the Cost Schedule, and, in addition, the defendant Department of Social Welfare includes such

work expenses as transportation and child care to the extent those expenses are determined to be unmet by plaintiff Williams' salary.[4] In a decision of the Director of the Department, the combination of these needs totalled $212.00 for the month of January 1968. Under § 11450(a), however, the maximum limitation on assistance to a family of one child with a needy parent was $148.00. This amount fell $64.00 short of plaintiff Williams' needs for the month of January 1968, according to the defendant's own determination of need.

Plaintiff Helen Hood is the mother of eleven children. Her problem illustrates the severe discriminatory effect of § 11450(a) on children in large families. All of plaintiff's eleven children are eligible to receive AFDC payments. According to the defendant's Cost Schedule, the monthly need of the children amounts to $532.00. But according to § 11450(a), eleven children living with a needy relative may receive no more than $399.00 per month. Plaintiff therefore receives $133.00 less *per month* than the state considers necessary to provide clothing, food, shelter, and other needed items for her children.

For equal protection purposes, the plight of the plaintiffs is significant because it contrasts with the good fortune of those AFDC recipients whose needs as determined by the state are met because they are less than the maximum aid limitation. In other words, plaintiffs are discriminated against by § 11450(a) because (1) it imposes flat limitations on families of a given size, without taking account of variants such as age, sex, unmet work expenses

4. This court's acceptance of the state's determination of need for plaintiff Williams indicates no opinion concerning the extent to which the state is required by federal statute or regulation to consider any particular work-related expense, nor concerning the particular method of computation by which such expense should be considered.

and cost of living, and because (2) it drastically decreases the permissible allotment per child as family size increases.[5]

The consequence is that § 11450(a) lacks a reasonable relationship to the need of AFDC recipients because the limitations it imposes take *no account* of age, sex, unmet work expenses and cost of living, and take *no reasonable account* of family size as determinants of need. Recipients whose needs happen to fall below the line drawn by § 11450(a) are fortunate enough to get their state-determined needs met; those whose state-determined needs fall above the line do not have their state-determined needs met. Younger children, females, residents of counties with a low cost of living, and (most patently) members of small families are the fortuitous beneficiaries of this set of circumstances. Older children, males, residents of counties with a high cost of living, and members of large families tend to bear the random burden of having their needs unmet.

This irrational and arbitrary distinction among AFDC recipients violates the equal protection clause of the Fourteenth Amendment. The guarantee that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws"[6] means that a state may not establish a classification that lacks any reasonable basis in light of the purpose of the program in question.[7] As the Supreme

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5. The statutory increment of $6.00 for each child after the ninth fails by at least $13.00 to meet the state-determined need of such child *for food alone*.

6. U. S. Const. amend. XIV, § 1.

7. "The courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose . . . ." McLaughlin v. Florida, 379 U.S. 184, 191 (1964); "[A] statutory discrimination must be based on differences that are reasonably related to the purposes of the Act in which it is found." Morey v. Doud, 354 U.S. 457, 465 (1957).

Court stated in *Levy v. Louisiana*, 391 U.S. 68, 71 (1968), "a State has broad power when it comes to making classifications . . ., [but] it may not draw a line which constitutes an invidious discrimination against a particular class. . . . Though the test has been variously stated, the end result is whether the line drawn is a rational one."

The defendants have not claimed that the lines drawn by Section 11450(a) are rational. Nowhere has the state set forth a plausible explanation why the needs of one AFDC recipient are fully met while the needs of another recipient are not. If the purpose of the aid limitations is to reduce state expenditures, there are methods by which the state could accomplish that objective without discriminating among AFDC recipients. The present scheme penalizes some recipients but not others on the basis of circumstances which are beyond the control of the recipients and have no rational relationship to the purpose of the AFDC program. Section 11450(a) consequently denies to the burdened class of AFDC recipients equal protection of the laws and is therefore unconstitutional as violative of the Fourteenth Amendment to the Constitution.[8]

The decision which this court hands down today is neither unheralded nor drastic. Other three-judge courts have

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8. The Supreme Court recently disposed of an unconstitutional resource-saving device similar to § 11450(a) with the following language:

> We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases now before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot be an independent ground for an invidious classification.

Shapiro v. Thompson, ... U.S. ..... (1969).

reached a similar result. In *Williams v. Dandridge*, 297 F. Supp. 450 (D. Md. 1968), the court considered a Maryland statute setting an absolute aid limitation for all families of $250.00. No additional grant was permitted if the family contained so many children that the total state-determined need exceeded $250.00. The court held the limitation offensive under the equal protection clause. The court found unsupportable the assumption of the statute that the eighth child, for example, is either not needy or must suffer his needs to go unsatisfied. That this eighth child could enjoy full satisfaction of his needs if he moved in with a relative underscored the illogic, and possibly pernicious consequences, of the maximum limitation.

In *Westberry v. Fisher*, 297 F. Supp. 1109 (D. Me. 1969), the court considered a limiting statute which imposed gradually reduced payments for additional children up to an absolute limitation of $250.00 for all recipients in a family. The court pointed out the conflict between the state's need schedule and the limitation statute and reasoned that only by striking down the limitation could the court reach a result reconcilable with the purpose of the AFDC program to fashion assistance according to need. See also *Dews v. Henry*, Civil No. 6417 Phx. (D. Ariz., March 13, 1969).

The fact that the statutes involved in the *Williams*, *Westberry*, and *Dews* cases imposed an absolute ceiling on aid to a family, whereas § 11450(a) permits a minimum increase of $6 per child in aid paid to a family no matter what the family size, does not justify distinguishing those cases from this one, since the minimal $6 increment does not close the gap between child need as calculated by defendant Montgomery and actual aid for large family children, while children from smaller families may receive sufficient aid to cover their calculated needs.

It is important at this point to clarify sharply the extent of our holding today. We do not make any determination as to what the actual financial needs of any California AFDC child are. This is a task which we leave to the California legislature and agencies which it authorizes to make such determinations, such as defendant Montgomery's Department. Nor do we wish to intimate that if and when such need schedules are calculated, the State must furnish all AFDC children with aid covering the full extent of such calculated need.

We say only that, the state having chosen to make expenditures to promote the welfare of needy children, those expenditures may not be made in such a way as to discriminate irrationally among the recipients. The limitations imposed by § 11450(a) create the forbidden irrational discrimination among recipients and that portion of § 11450(a) is therefore unconstitutional. It is to that statute alone, and the method of disbursement which it commands, that this court has directed its attention.

For the reasons expressed above, this court is of the opinion that the conflict between California Welfare & Institutions Code § 11450(a) and the equal protection clause of the Fourteenth Amendment creates a substantial likelihood that the plaintiffs are likely to prevail. This court is also of the opinion that those AFDC recipients whose state-determined needs are not met due to the operation of § 11450(a) form a proper class for the purpose of securing injunctive relief under Fed. R. Civ. Proc. 23(a) and 23(b)(2). Further, this court is properly convened, 28 U.S.C. § 2281, and has jurisdiction of the cause, 28 U.S.C. §§1343 (3) and (4). *King v. Smith*, 392 U.S. 309 (1968).

The foregoing memorandum opinion constitutes this court's findings of fact and conclusion of law according to Fed. R. Civ. Proc. 52(a).

Therefore,

It Is Ordered that defendants Montgomery, Terzian and Born are preliminarily enjoined, pending further order of this court, from enforcing the maximum aid table in California Welfare & Institutions Code § 11450(a) and all regulations promulgated thereunder.

Dated: August 28, 1969.

.....
United States Circuit Judge

/s/ ALBERT C. WOLLENBERG
United States District Judge

ALFONSO J. ZIRPOLI
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 49613 Civil

ERNESTINE KAISER, et al., *Plaintiffs,*

vs.

JOHN MONTGOMERY, et al., *Defendants.*

Hamlin, Circuit Judge (dissenting):

I respectfully dissent. Plaintiff contends that the California laws relating to the amount of aid to be given families with dependent children are violative of the 14th Amendment of the Constitution, which provides that no state "shall deny to any person within its jurisdiction the equal protection of the laws." Plaintiff seeks a preliminary injunction enjoining the enforcement of section 11450(a) of the California Welfare and Institutions Code, and the regulations promulgated thereunder.

Section 11450 of the Welfare and Institutions Code of California sets out the maximum amount that shall be paid to families having needy children. This statute does not contain an absolute limitation as to the total amount that shall be paid (as do the statutes considered in the cases cited in the majority opinion). It does provide a plan whereby the amount of aid to the family increases when the number of dependent children in the family increases. It may be that such plan does not provide complete support in many cases, but I do not believe that it lacks a reasonable

basis or that it arbitrarily or capriciously deprives anyone of the equal protection of the laws in violation of the United States Constitution.

The issue before us at this time is the application for a preliminary injunction. I feel such an application should be denied at this time.

Appendix B

WELFARE AND INSTITUTIONS CODE

11452. Minimum basic standards of adequate care shall be distributed to the counties and shall be binding upon them. Such standards shall be determined by the rules and regulations of the department, to insure:

(a) Safe, healthful housing.

(b) Minimum clothing for health and decency.

(c) Low cost adequate food budget meeting recommended dietary allowances of the National Research Council adapted to prices of the area in which the recipient resides.

(d) Utilities in accordance with the basic minimum need.

(e) Other items verified as needed, including household operation, education and incidentals, recreation, personal needs, and insurance.

(f) Allowance for essential household furniture and equipment.

(g) Allowance for essential medical, dental, or other remedial care when not available through a public facility.

(h) Allowances for special needs for any one or more of the following items: special diets upon the recommendation of a physician, transportation, laundry, housekeeping service, and telephone; and utilities in excess of the basic minimum need.

11453. The budget established by the department in compliance with Section 11452 shall be revised no oftener than semiannually and each county shall have a minimum of three months between the receipt thereof and the effective date of such budget revision within which to comply with such revision.

All grants computed in accordance with the budget shall be paid to the nearer dollar. No change shall be made in the grant for increases or decreases of less than two dollars ($2).

PUBLIC SOCIAL SERVICES MANUAL

Determining Amount of Aid and Method of Computing Payment

PSS 44-313.51 *Child Living with Parent or Relative*

The amount of aid is determined by first subtracting the family's nonexempt income from total need determined in accord with the Need chapter. The amount of the *AFDC* payment is the budget deficit, so determined and rounded to the nearest dollar, or the Maximum State Participation Base (see Section 44-313) whichever is less. When the Maximum State Participation Base is less than the budget deficit, the difference may be met by county supplementation.

Appendix C

United States District Court
For the Northern District of California

Civil Action No. 49613

ERNESTINE KAISER, et al.,
Plaintiffs,

vs.

JOHN C. MONTGOMERY, et al.,
Defendants.

AFFIDAVIT

John M. McCoy being duly sworn deposes and says:

1. I am the Chief of the Program Estimates Bureau of the State Department of Social Welfare, State of California.

2. In my capacity as such, I have estimated that the additional cost of paying full need under the current Standard of Assistance in the program providing Aid to Families with Dependent Children (Burton-Miller Act, Sections 11000 et seq., California Welfare and Institutions Code) for the months of December 1969 through June 1970, in disregard of the limitations of Section 11450(a) of that Code would be $40,764,700.

Cost sharing of this amount would be as follows:

Federal: $19,380,600
State: $14,434,300
County: $ 6,949,800

3. If the allowance for housing were to be increased above the average of $63 allowed in the current Standard of Assistance, the following cost increases would result in addition to those reflected in the foregoing paragraph:

A. A $15 increase to an average of $78: $32,361,500
Federal: $ 15,385,600
State: $ 11,458,700
County: $ 5,517,200
Total: $ 32,361,500

B. A $30 increase to $93: $65,660,100
Federal: $ 31,222,300
State: $ 23,245,400
County: $ 11,192,400
Total: $ 65,660,100

C. A $45 increase to $108: $100,728,300
Federal: $ 47,916,500
State: $ 35,647,900
County: $ 17,163,900
Total: $100,728,300

D. A $60 increase to $123: $136,712,600
Federal: $ 65,051,900
State: $ 48,370,800
County: $ 23,289,900
Total: $136,712,600

Dated this 27th day of October 1969.

/s/ JOHN M. McCOY
Chief, Program Estimates Bureau
State Department of Social Welfare

Subscribed and sworn to before me
this 27th day of October 1969.

SELMA GAMMAGE
Selma Gammage
Notary Public
[SEAL]

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In the Supreme Court of the United States

OCTOBER TERM 1969

No. 828

JOHN MONTGOMERY, ET AL.,
Appellants,

vs.

ERNESTINE KAISER, ET AL.,
Appellees.

On Appeal from the United States District Court
for the Northern District of California

Motion to Affirm

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In the Supreme Court of the United States

OCTOBER TERM 1969

No. 828

JOHN MONTGOMERY, et al.,
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Appellees.

On Appeal from the United States District Court for the Northern District of California

Motion to Affirm

Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the judgment and decree of the District Court be affirmed on the ground that the question raised by Appellants are without substantial merit.

QUESTIONS PRESENTED

1. Does the California maximum grant statute, Welfare and Institutions Code Section 11450(a), violate the equal

protection clause of the Fourteenth Amendment when it operates to deny to nearly half of the families on Aid to Families with Dependant Children the amout of money determined by Appellants to be necessary to meet their minimal needs while allowing other AFDC families an amount to meet their total needs?

STATEMENT OF THE CASE

Appellees, the Plaintiffs below, are members of a class of recipients of the Aid to Families with Dependent Children (hereinafter AFDC) whose basic financial needs, as determined by Appellants, are not met because of the restrictions of the California maximum grant statute Welfare and Institutions Code (hereinafter W&I Code) Section 11450(a) which was held unconstitutional below. Pursuant to statutory mandate of California W&I Code Section 11452,[1] Appellant Montgomery has issued "cost schedules" which list the dollar amounts necessary to achieve "minimum standards of adequate care" for AFDC recipients in California. However, during fiscal years 1967-68 a monthly average of 368,800 AFDC recipients (or approximately 47% of the total) received welfare payments in dollar amounts less than those which had been established as their minimal needs due to the operation of the statute challenged herein. The remaining AFDC recipients, approximately 53% of the total, received their full needs.

Appellees represent those AFDC recipients in California who receive or have received payments in amounts less than their budgeted needs because of the operation of California's maximum grant statute. Their respective circumstances demonstrate the manner in which the statute operates and affects the entire class, as well as how it

1. The text of which is set forth in Appellants' Jurisdictional Statement Appendix B.

affects two sub-classes contained within the entire class. Appellee Kaiser, whose case is typical of the principal class, has four children currently eligible for AFDC and receives for them and herself an amount which is $37 per month (or nearly $450 per year) *less* than the amount which Appellant Montgomery has determined as minimal for all of the family's needs. In an uncontested affidavit Appellee Kaiser pointed out that it would be difficult to support her family on the amount established by the cost schedule but since the amount is substantially less it is impossible. Appellee Kaiser has stated that her children are often deprived of food and clothing.

The remaining Appellees, and the sub-classes they represent, demonstrate more specific patterns of denial caused by the challenged provision. Appellee Williams, a representative of the first sub-class, had the usual needs listed in the cost schedule, and as required by federal law[2] and state regulations[3] was also entitled to an additional AFDC allowance for her work training expenses for child care and transportation. In January, 1968, these amounts totalled $212. Under the maximum limitation set by the W&I Code Section 11450(a), however, Appellee Williams received only $148. She was thus forced to use earnings, which under the Economic Opportunity Act[4] and parallel California regulations[5] were to be exempted as a work incentive, to meet needs which for other more fortunate AFDC families are met by their welfare grants. In some months even those earnings were insufficient and Plaintiff Williams suffered

2. 42 USC Section 602(a)(7)

3. California Public Social Services Manual, Section 44-113.233, et seq.

4. 42 USC Section 2981(a)(1). This provision was subsequently incorporated in modified form into the Social Security Act by 42 USC Section 602(a)(8)(A)(ii).

5. California Public Social Services Manual, Section 44-111.23-24 (effective 7-1-68).

an actual loss because of her efforts to become self supporting through her work training program.

Appellees Crosby, Howard, and Hood represent a second subclass, that of large families. This is the group of persons most severely discriminated against by the maximum grant limitation. Appellee Hood is the mother of eleven children whose monthly needs, according to Appellants' cost schedules, amount to $532. However, the maximum grant payable to a family of this size according to W&I Code Section 11450(a) is only $399 which means that Appellee's family receives $133 *per month* less than the state considers necessary to provide clothing, food, shelter and other essential items. Appellee's Howard family of thirteen children, and Appellee's Crosby's household of ten children suffer similar deprivation.

The case is before this Court on the appeal of John Montgomery, et al., who seek to reverse the decision of the three judge panel, one judge dissenting, which preliminary enjoined enforcement of California's W&I Code Section 11450(a) because it created arbitrary and irrational distinctions among AFDC recipients to the deprivation of these plaintiffs and their class. Appellants applied for and secured a Stay below of the Preliminary Injunction pending decision of this Court.

ARGUMENT

The Three Judge Court Below Correctly Found That the California Maximum Grant Statute Violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

The three judge court below, one judge dissenting, correctly determined that California's W&I Code Section 11450(a) violates the equal protection clause of the Fourteenth Amendment of the United States Constitution because it creates arbitrary and irrational classifications

which bare no relationship to the purpose of the statute.[6] In its opinion the court stated:

> "The defendants have not claimed that the lines drawn by Section 11450(a) are rational. Nowhere has the state set forth a plausible explanation why the needs of the one AFDC recipient are fully met, while the needs of another recipient are not. If the purpose of the aid limitations is to reduce state expenditures, there are methods by which the state could accomplish that objective without discriminating among AFDC recipients. The present scheme penalizes some recipients but not others on the basis of circumstances which are beyond the control of the recipients and have no rational relationship to the purpose of the AFDC program. Section 11450(a) consequently denies to the burdened class of AFDC recipients equal protections of the laws and is therefore unconstitutional. ... ."[7]

It is well settled that the equal protection clause forbids arbitrary classifications by state statutes and requires that any state statutory discriminations be based on differences reasonably related to the purpose of the act. *Gulf, Colorado & Santa Fe Ry v. Ellis,* 165 U.S. 150 (1896); *F. S. Royster Guano Co. v. Virginia,* 253 U.S. 412 (1920); *Morey v. Douds,* 354 U.S. 457 (1957); *McLaughlin v. Florida,* 379 U.S. 184 (1964). Moreover, where a fundamental right, as in this

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6. The court also correctly perceived that the California statutory increment of $6.00 per child did not distinguish the California statute from those provisions elsewhere which impose absolute ceilings on the amount of aid to a family since:

> "The minimal $6 increment does not close the gap between child need as calculated by defendant Montgomery and actual aid for large family children, while children from smaller families may receive sufficient aid to cover their calculated needs." Cf. Page 8, Appendix A, Appellants' Jurisdictional Statement.

7. Cf. Page 7, Appendix A, Appellants' Jurisdictional Statement.

case—the right of survival, is asserted, the proper standard to be used in determining whether a state statute violates the equal protection clause is that of "close scrutiny." *Harper v. Virginia Board of Elections,* 383 U.S. 663 (1966); *Skinner v. Oklahoma,* 316 U.S. 535 (1942).

Appellants concede that the purpose of the AFDC program is to furnish financial assistance to needy dependant children and their families "to help maintain and strengthen family life and to help such parents or relatives to obtain or retain capability for the maximum self support and personal independance" 42 USC Section 601.[8] Under this mandate, and pursuant to State Law W&I Code Section 11452, Appellant Montgomery adopted cost schedules in which he determined the minimum needs of family units for vital items such as food, shelter, clothing, transportation, etc., and in which he quite reasonably determined that these needs vary according to the number, age, sex, and county of residence of the members of the recipient family.

However, actual payments to AFDC recipients do not vary according to these factors. The statute in question limits the amount that an AFDC family may receive solely on the basis of the number of children in the family and drastically decreases the permissible allotment per child as the family size increases.[9] Thus an extra $49 per month is allowed by the maximum grant statute to meet food, clothing, and other needs for the third child of a family, while only $6 per month is allowed to meet the same need for the tenth child.[10] In other words, a child in a large

8. The parallel state provision is California W&I Code Section 11205.

9. Cf. chart at Page 3, Appellants' Jurisdictional Statement.

10. It should also be noted the $6 monthly allowance alloted for all needs is less than one-third of the amount Appellants' schedule as necessary for food alone ($19.10 per month).

family would benefit economically if he were removed from his family and placed in one of smaller size—despite the express statutory purpose that payments strengthen family life.

Less blatant but equally invidious consequences occur in those California families of all sizes which are affected by the maximum grant. Every such family is deprived of some essentials of life while other AFDC families are given funds to meet their needs. Appellant Montgomery admits that statistically 47% of the AFDC recipients in California are discriminated against by the challenged statute while the remainder of the AFDC recipients have their full needs met. When faced with the uncontested facts, the lower court of necessity found that there were no rational bases for the discrimination which results from operation of the California maximum grant statute, and that the statute was therefore unconstitutional.

The Points Presented on Appeal by Appellants Are Not Substantial and Do Not Warrant Argument Before This Court.

Appellants argue that the discrimination inherent in the maximum grant statute is justified by the need of the State to preserve funds. This argument has repeatedly been rejected by this Court. "The saving of welfare costs cannot be an independant ground for an invidious classification." *Shapiro v. Thompson*, 394 U.S. 618 (1969). Even when conservation of public funds is a statute's primary purpose, such a statute may not discriminate arbitrarily. *Rinaldi v. Yeager*, 384 U.S. 305 (1966); *Green v. Dept. of Public Welfare*, 270 F. Supp 173 (D. Del. 1967).

Appellants' contention that the statute provides the same maximum grant limit for each family of the same size is, of course, true, but entirely beside the point. The classification which Plaintiffs contend is arbitrary and irrational

is that created between families of different sizes. Appellants have made no attempt whatsoever to justify this discrimination. Equally irrelevant is Appellants' contention that the state need not guarantee that each family will receive the amount of its state estimated needs. Appellees have not raised that contention in this case. The point contested below is the inequitable distribution of payments which are made in a fashion which permits some families to receive their state determined needs while others do not. Appellees have asked, and the three judge panel has ordered, only that all families be treated equally.

A further claim of Appellants that the maximum grant limitations are rational because "there must be some incentive for welfare recipients to seek employment." (Jurisdictional Statement, Page 10) is equally without merit. The California maximum grant does not operate to limit funds only where there is an employable person in the family to whom an inducement to seek employment might be relevant. It affects employables and unemployables alike —consequently the work incentive rationale must be summarily dismissed as making the statute invalid for overreaching. However, more significantly, there are many provisions in the federal and California statutes relating to public assistance which specifically provide work incentives for employable persons who are receiving aid including, for example, those provisions which the maximum grant actually thwarted as a work incentive in the case of Appellee Williams. W&I Code Section 11450(a) is in no way rationally related to these statutory schemes and work incentive policies.

CONCLUSION

In conclusion, Appellants have raised no substantial questions which warrant further argument of this case. We respectfully submit that the judgment and decrees of the three judge panel, one judge dissenting, should be affirmed. Because a Stay of the Preliminary Injunction has been granted by the three judge court and the Appellees are suffering irreparable injury by the continued operation of the statute in question, Appellees respectfully request that this motion to affirm be speedily granted.

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Attorneys for Appellees